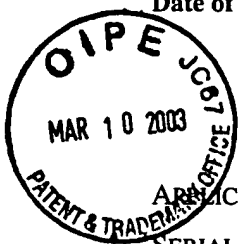


Date of Deposit: March 10, 2003

Attorney Docket No. 21402-214 CIP (Cura-514 CIP)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Edinger et al.

SERIAL NUMBER: 10/087,684

EXAMINER: Not Yet Assigned

FILING DATE: March 1, 2002

ART UNIT: 1645

FOR: PROTEINS AND NUCLEIC ACIDS ENCODING SAME

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Commissioner for Patents

Washington, D.C. 20231

**PETITION FOR FILING PATENT APPLICATION
WHEN AN INVENTOR REFUSES TO EXECUTE UNDER 37 C.F.R. § 1.47(a)**

1. Pursuant to 35 U.S.C. § 116 and 37 C.F.R. § 1.47(a), the undersigned hereby petitions to allow each of the signing inventors to make application on his or her behalf as well as on behalf of the nonsigning joint inventor, Denise Lepley.
2. The inventors of the invention claimed in the above-referenced application are Shlomit R. Edinger, John R. MacDougall, Isabelle Millet, Karen Ellerman, David J. Stone, Valerie Gerlach, William M. Grosse, John P. Alsobrook, II, Denise M. Lepley, Daniel K. Rieger, Catherine E. Burgess, Stacie J. Casman, Kimberly A. Spytek, Fernec L. Boldog, Li Li, Muralidhara Padigar, Vishnu Mishra, Meera Patturajan, Suresh G. Shenoy, Luca Rastelli, Velizar T. Tchernev, Corine A.M. Vernet, Bryan D. Zerhusen, Uriel M. Malyankar, Xiaojia Guo, Charles E. Miller, and Esha A. Gangolli, as identified in the unexecuted Combined Declaration and Power of Attorney that was submitted at the time this application was filed. Co-inventor Denise Lepley refuses to execute the Combined Declaration and Power of Attorney for this application. As required, Applicants enclose herewith copies of counterparts of the Combined Declaration and Power of Attorney form executed by the other co-inventors.
3. CuraGen Corporation was the employer of Denise Lepley (as well as the other co-inventors), at the time the invention, claimed in the present application (U.S.S.N. 10/087,684), which claims priority to U.S.S.N. 60/253,834, filed November 29, 2000; U.S.S.N. 60/250,926,

filed November 30, 2000; U.S.S.N. 60/264,180, filed January 25, 2001; U.S.S.N. 60/274,194, filed March 8, 2001; U.S.S.N. 60/313,656, filed August 20, 2001; and U.S.S.N. 60/327,456, filed October 5, 2001, was conceived and reduced to practice. A copy of a CuraGen Corporation employment agreement executed by Denise Lepley on April 23, 2001, is attached to this petition. Under this agreement Denise Lepley is obligated to execute any and all applications for domestic and foreign patents covering inventions conceived, made, or discovered during the course of her employment.

4. A Notice to File Missing Parts for this case was mailed on August 9, 2002. No executed Combined Declaration and Power of Attorney was received from Denise Lepley. Follow-up correspondence from colleagues of the undersigned to CuraGen Corporation did not result in receipt of an executed Combined Declaration and Power of Attorney from Dr. Lepley. Subsequently, the undersigned was informed that CuraGen Corporation was unable to obtain the executed document from Dr. Lepley.

5. On December 11, 2002, Jannine Malicki, the head of the Human Resources Department at CuraGen Corporation, spoke with Dr. Lepley regarding her obligation to execute the documents that were resent to her on December 4, 2002. During this conversation, Dr. Lepley said that she was not aware of the extent of the work she would have to do in order to sign all outstanding formal papers. According to Dr. Lepley, it was all more than she thought she would have to do. When she was reminded of her obligation under her Employment Agreement to sign all papers, she indicated that she would consider undertaking the work, if she were compensated for her time.

6. Finally, on December 13, 2002, the undersigned spoke with Denise Lepley regarding her obligation to execute documents for all pending applications. During this conversation, Dr. Lepley indicated that she would only execute the documents in exchange for compensation for her time from CuraGen Corporation.

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7. Thus, based upon the record of correspondence to date, Denise Lepley has refused and continues to refuse to execute the Combined Declaration and Power of Attorney and to make application as a joint inventor of the present application.

8. Under the requirements set forth under 37 C.F.R. § 1.47, the last address of Denise Lepley known to the undersigned is:

University of Connecticut Health Center (Center for Vascular Biology)
ARB Bldg-E5052
263 Farmington Avenue
Farmington, CT 06030-3501

9. Submitted herewith is:

- 9.1 A copy of a written employment agreement between Denise Lepley and CuraGen Corporation signed April 23, 2001. (Exhibit A)
- 9.2 Combined Declaration and Power of Attorney counterparts executed by co-inventors Shlomit R. Edinger, John R. MacDougall, Isabelle Millet, Karen Ellerman, David J. Stone, Valerie Gerlach, William M. Grosse, John P. Alsobrook, II, Daniel K. Rieger, Catherine E. Burgess, Stacie J. Casman, Kimberly A. Spytek, Fernec L. Boldog, Li Li, Muralidhara Padigar, Vishnu Mishra, Meera Patturajan, Suresh G. Shenoy, Luca Rastelli, Velizar T. Tchernev, Corine A.M. Vernet, Bryan D. Zerhusen, Uriel M. Malyankar, Xiaojia Guo, Charles E. Miller, and Esha A. Gangolli. (Exhibit B)
- 9.3 A check (#15761) in the amount of \$130.00 as required by 37 C.F.R. § 1.17(h).
- 9.4 A copy of the Preliminary Amendment and Response to Notice to File Missing Parts filed on March 10, 2003. (Exhibit C)

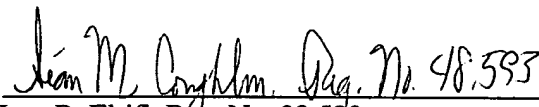
Based upon the pertinent facts presented herein, the undersigned hereby respectfully requests that application for the above-identified invention be made by each of the signing co-inventors on his or her behalf and on the behalf of the nonsigning co-inventor, Denise Lepley. To that end, the undersigned, on behalf of the signing co-inventors, respectfully requests consideration and grant of this petition for filing the patent application by less than all of the co-inventors pursuant to 37 C.F.R. § 1.47(a).

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Should the Commissioner have any questions concerning this petition, he is invited to telephone the undersigned at the number provided.

Respectfully submitted,

Dated: March 10, 2003


Ivor R. Elrifi, Reg. No. 39,529
Attorney for Applicants
c/o MINTZ, LEVIN
One Financial Center
Boston, Massachusetts 02111
Tel: (617) 542-6000
Fax: (617) 542-2241

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EMPLOYEE CONFIDENTIAL INFORMATION AND INVENTION AGREEMENT

Whereas, Denise Lepley (the "Employee") is about to enter or continue in the employ of the CuraGen Corporation, a Delaware corporation having its principal place of business at 555 Long Wharf Drive, New Haven, CT 06511 (the "Company"), and in such employment will or may become informed as to many of its procedural, commercial and technical needs, problems, developments and projects, as well as activities directed thereto,

In consideration of said employment being given or continued and the compensation therein, it is agreed as follows:

PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY

1. Employee shall promptly disclose to the Company all Inventions. Inventions shall mean, for purposes of this paragraph, inventions, discoveries, developments, methods and processes (whether or not patentable or copyrightable or constituting trade secrets) conceived, made or discovered by Employee (whether alone or with others) while employed by the Company and that relate, directly or indirectly, to the past, present, or future business activities, research, product design or development, personnel, and business opportunities of the Company, or result from tasks assigned to Employee by the Company or done by Employee for or on behalf of the Company. Employee hereby assigns and agrees to assign to the Company (or as otherwise directed by the Company) his full right, title and interest in and to all Inventions. Employee agrees to execute any and all applications for domestic and foreign patents, copyrights or other proprietary rights and to do such other acts (including, among others, the execution and delivery of instruments of further assurance or confirmation) requested by the Company to assign the Inventions to the Company and to permit the Company to file, obtain and enforce any patents, copyrights or other proprietary rights in the Inventions. Employee agrees to make and maintain adequate and current written records of all Inventions, in the form of notes, sketches, drawings, or reports relating thereto, which records shall be and remain the property of and available to the Company at all times.

2. All designs, ideas, inventions, improvements, and other creations made or owned by Employee before becoming an employee of the Company and which Employee desire to exempt from this Agreement are listed on Attachment A hereof and authorized for exclusion by the signature of an Officer of the Company. (If Employee does not have any such designs, ideas, inventions, improvements, or other creations write "none" on this line: NONE.)

3. Employee agrees to notify the Company in writing before Employee makes any disclosure or performs or causes to be performed any work for or on behalf of the Company, which appears to threaten or conflict with (a) rights Employee claims in any invention or idea conceived by Employee or others (i) prior to Employee's employment, or (ii) otherwise outside the scope of this Agreement; or (b) rights of others arising out of obligations incurred by

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Employee (i) prior to this Agreement, or (ii) otherwise outside the scope of this Agreement. In the event of Employee's failure to give notice under the circumstances specified, the Company may assume that no such conflicting invention or idea exists and Employee agrees that Employee will make no claim against the Company with respect to the use of any such invention or idea in any work which Employee performs or causes to be performed for or on behalf of the Company.

PROPRIETARY AND TRADE SECRET INFORMATION

4. (a) The Employee agrees that he will keep confidential and will not make any unauthorized use or disclosure, or use for his own benefit or the benefit of others, during or subsequent to his employment of any research, development, engineering and manufacturing data, plans, designs, formulae, processes, specifications, techniques, trade secrets, financial information, customer or supplier lists or other information that becomes known to him as a result of his employment with the Company which is the property of the Company or any of its clients, customers, consultants, licensors, licensees, or affiliates, provided nothing herein shall be construed to prevent Employee from using his general knowledge and skill after termination of his employment whether acquired prior to or during his employment by the Company.

(b) Proprietary information subject to paragraph 4(a) does not include information that: (i) is or later become available to the public through no breach of this Agreement by the Employee; (ii) is obtained by the Employee from a third party who had the legal right to disclose the information to the Employee; or (iii) is required to be disclosed by law, government regulation, or court order.

5. During the course of his employment with the Company, the Employee will not accept information from sources outside of the Company which is designated as "Confidential," or "Proprietary," or "Trade Secret" without prior written permission from the Company or its attorneys. The Employee is not expected to and is expressly forbidden by the Company policy from disclosing to the Company "Trade Secret" or "Confidential" or "Proprietary" information from a former employer.

6. During his employment, or upon leaving the employment of the Company, the Employee will not remove from the Company premises, either directly or indirectly, any drawings, writings, prints, any documents or anything containing, embodying, or disclosing any confidential or proprietary information or any of the Company's trade secrets unless express written permission is given by the Company management. Upon termination of his employment, Employee shall return to the Company any and all documents and materials that are the property of the Company or its customers, licensees, licensors or affiliates or which contain information that is the property of the Company.

COMPETITIVE ACTIVITIES

7. (a) While in the employ of the Company and for a period of one year or the maximum period permitted by applicable law (whichever is shorter) following termination of his

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employment with the Company. Employee shall not, without the approval of the Company, alone or as a partner, officer, director, consultant, employee, stockholder or otherwise, engage in any employment, consulting or business activity or occupation that is or is intended to be competitive with the business of the Company, as being considered, researched, developed, marketed and/or sold at the time of termination; provided, however, that the holding by Employee of any investment in any security shall not be deemed to be a violation of this Section 7 if such investment does not constitute over one percent (1%) of the outstanding issue of such security. This restriction shall run for a period of one year after said termination, and if there shall be any violation hereof during said period, then for a period of one year after cessation of such violation.

(b) While in the employ of the Company, Employee shall promptly notify the Company, if Employee, alone or as a partner, officer, director, consultant, employee, stockholder or otherwise, engages in any employment, consulting or business activity or occupation outside his employment by the Company.

(c) You agree that you will provide, and that the Company may similarly provide in its discretion, a copy of this Agreement to any business or enterprise which you may directly, or indirectly, own, manage, operate, finance, join, control or in which you participate in the ownership, management, operation, financing, or control, or with which you may be connected as an officer, director, employee, partner, principal, agent, representative, consultant or otherwise.

GENERAL

8. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. The Employee agrees that the Company may assign this Agreement to any person or entity controlled by, in control of, or under common control with, the Company.

9. This Agreement constitutes the entire agreement between the parties as to the subject matter hereof. No provision of this Agreement shall be waived, altered or canceled except in writing signed by the party against whom such waiver, alteration or cancellation is asserted. Any such waiver shall be limited to the particular instance and the particular time when and for which it is given.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.

11. The invalidity or unenforceability of any provision hereof as to an obligation of a party shall in no way affect the validity or enforceability of any other provision of this Agreement, provided that if such invalidity or unenforceability materially adversely affects the benefits the other party reasonably expected to receive hereunder, that party shall have the right to terminate this Agreement. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity or subject so as to be unenforceable at law, such provision or provision shall be construed by limiting or

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reducing it or them, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

IN WITNESS WHEREOF, I have duly executed this Agreement as of this 23rd day of April, 2001.

Employee Name: Denise Lepley

Employee Title: Research Scientist

Employee Signature: 

Address: 322 East Main Street
Branford, CT 06405

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Attachment A